

#19
12/9/02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant(s): Thyssen et al.

Group Art Unit: 2654

Application Serial No.: 09/841,764

Examiner: Nolan, D.

Filed: April 24, 2001

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DEC 06 2002

Title: Silence Description Coding for
Multi-Rate Speech Codecs

Technology Center 2800

REPLY BRIEF

BOX AF
Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Madam/Sir:

This is a Reply Brief under 37 CFR § 1.193 in response to the Examiner's Answer, dated November 6, 2002.

REMARKS

A. Grouping of the Claims

The Examiner has stated that “[t]he appellant’s statement in the brief that all claims stand or fall together is not agreed with because appellant’s brief does not provide reasons as set forth in 37 CFR §§ 1.192(c)(7) and (c)(8).” (Examiner’s Answer, page 3, lines 4-6.)

37 CFR § 1.192(c)(7) reads:

Grouping of claims. For each ground of rejection which appellant contests and which applies to a group of two or more claims, the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together and, in the argument under paragraph (c)(8) of this section, appellant explains why the claims of the group are believed to be separately patentable. Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable.

With respect to the Examiner’s ground of rejection that “Rapeli makes it clear to a person of ordinary skill in the art of speech signal processing that the *selection of the silent mode would be made independent of any previous speech coding mode*” (Examiner’s Answer, page 5, line 18 through page 6, line 2), appellant respectfully submits that all pending claims stand or fall together. According to 37 CFR § 1.192(c)(7), appellant must provide reasons if appellant asserts that the claims of the group do not stand or fall together. Therefore, the Examiner’s statement that “appellant’s brief does not provide reasons” is not applicable where, as in here, appellant has asserted that all pending claims stand or fall together.

Regardless, however, appellant respectfully submits that in Summary of Invention and Argument sections of the Appeal Brief, appellant has provided sufficient reasons showing that, with respect to the above-described ground of rejection, all pending claims stand or fall together. In short, all pending independent claims 21, 34, 38 and 46 have been rejected by the Examiner

based on the above-described ground of rejection. Accordingly, all pending independent claims and their respective dependent claims stand or fall together based on the Board's ruling on appellant's submission that Rapeli fails to disclose, teach or suggest that, for example, "the processing circuit selects the silence description coding mode upon the identification of the absence of a substantially speech-like characteristic of the segment of the speech signal independent of the speech coding mode applied immediately before the segment", as recited in independent claim 21.

B. Arguments

Appellant respectfully submits that the Examiner's restatement of the ground of rejection in the Examiner's Answer confirms appellant's contention that the fundamental issue before the Board is whether the following statement by the Examiner is erroneous:

By not specifying a dependency between processing speech and non-speech segments, Rapeli makes it clear to a person of ordinary skill in the art of speech signal processing that the selection of the silent mode would be made independent of any previous speech coding mode.
(Examiner's Answer, page 5, line 18 - page 6, line 2) (emphasis added.)

Appellant respectfully submits that the above-shown statement by the Examiner is legally and technically erroneous. The Examiner states that Rapeli does not specify a dependency between processing speech and non-speech segments; however, it remains true that Rapeli does not specify an independency between processing speech and non-speech segments either. Accordingly, using the Examiner's logic, one may also state that:

By not specifying an independency between processing speech and non-speech segments, Rapeli makes it clear to a person of ordinary skill in the art of speech signal processing that the selection of the silent mode would be made dependent of any previous speech coding mode.

In fact, as stated in the Appeal Brief, Rapeli is silent on the dependency or independency between processing speech and non-speech segments. If such silence is to be construed in any

way, it should be construed in light of the conventional wisdom in the art, which teaches a dependency. (See Standard Oil Co. v. American Cyanamid Co., 774 F.2d 448, 454 (Fed. Cir. 1985)).

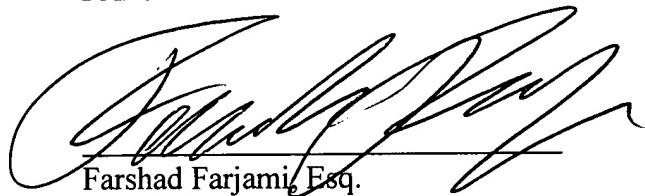
To provide a simple example, if the conventional wisdom in the art and all cited references disclose, teach or suggest that in order to reach point A from point B, one has to travel through point C; a silent cited reference that merely recites reaching point A from point B cannot be relied upon to reject an invention that claims reaching point A from point B through point D and not point C. In fact, such silent reference should be interpreted in light of the conventional wisdom in the art, which is point A is reached from point B through point C.

C. Conclusion

The cited references of record, considered singly or collectively, fail to disclose or in any way suggest appellant's claimed invention. Accordingly, appealed claims 21-44 and 46-53 should be allowed.

Respectfully Submitted;
FARJAMI & FARJAMI LLP

Dated: 11/26/02



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First Named Inventor

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Farjami & Farjami, LLP

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